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Attorneys for Defendant Google LLC

UNITED STATES DISTRICT COURT

NORTHERN DISTRICT OF CALIFORNIA, SAN JOSE DIVISION

CHASOM BROWN, WILLIAM BYATT,
JEREMY DAVIS, CHRISTOPHER
CASTILLO, and MONIQUE TRUJILLO,
individually and on behalf of all similarly
situated,

Plaintiffs,

v.

GOOGLE LLC,
Defendant.

Case No. 5:20-cv-03664-LHK-SVK

**ADMINISTRATIVE MOTION TO SEAL
JOINT CASE MANAGEMENT
STATEMENT**

I. INTRODUCTION

Pursuant to Civil Local Rules 7-11 and 79-5, Defendant Google LLC (“Google”) respectfully seeks to seal certain portions of the parties’ Joint Case Management Statement, which contains non-public, sensitive confidential and proprietary business information that could affect Google’s competitive standing and may expose Google to increased security risks if publicly disclosed. This information is highly confidential and should be protected. This Court has previously sealed the same or substantively similar information, including in Dkts. 143, 152, 160, 172, 174, 183, 190, 197.

This Administrative Motion pertains for the following information contained in the Joint Case Management Statement:

Document	Portions to be Filed Under Seal	Party Claiming Confidentiality
Joint Case Management Statement	Portions Highlighted in Yellow at: page 4, lines 26-27; page 5, lines 3-10, 20-23; page 7, lines 17-28; page 8, lines 1-2; page 9, lines 26-28; page 10, lines 1-5, 10-11, 13-18; page 11, lines 5, 7-10, 13-15; page 12, lines 19-22; page 13, line 13; page 16, lines 2-3, 5-11, 13-14.	Google

II. LEGAL STANDARD

A party seeking to seal material must “establish[] that the document, or portions thereof, are privileged, protectable as a trade secret or otherwise entitled to protection under the law” (*i.e.*, is “sealable”). Civ. L.R. 79-5(b). The sealing request must also “be narrowly tailored to seek sealing only of sealable material.” *Id.*

In the context of dispositive motions, materials may be sealed in the Ninth Circuit upon a showing that there are “compelling reasons” to seal the information. *See Kamakana v. City & Cty. of Honolulu*, 447 F.3d 1172, 1179-80 (9th Cir. 2006). However, a party seeking to seal information in a non-dispositive motion must show only “good cause.” *Id.* at 1179-80. The rationale for the lower standard with respect to non-dispositive motions is that “the public has less of a need for access to

1 court records attached only to non-dispositive motions because these documents are often unrelated,
 2 or only tangentially related, to the underlying cause of action” and that as a result “[t]he public
 3 policies that support the right of access to dispositive motions, and related materials, do not apply with
 4 equal force to non-dispositive materials.” *Kamakana*, 447 F.3d at 1179; *see also TVIIM, LLC v.*
 5 *McAfee, Inc.*, 2015 WL 5116721, at *1 (N.D. Cal. Aug. 28, 2015) (“Records attached to non-
 6 dispositive motions are not subject to the strong presumption of access.”) (citation omitted). Under
 7 the “good cause” standard, courts will seal statements reporting on a company’s users, sales,
 8 investments, or other information that is ordinarily kept secret for competitive purposes. *See*
 9 *Hanginout, Inc. v. Google, Inc.*, 2014 WL 1234499, at *1 (S.D. Cal. Mar. 24, 2014); *Nitride*
 10 *Semiconductors Co. v. RayVio Corp.*, 2018 WL 10701873, at *1 (N.D. Cal. Aug. 1, 2018) (granting
 11 motion to seal “[c]onfidential and proprietary information regarding [Defendant]’s products” under
 12 “good cause” standard) (Van Keulen, J.). Although the materials that Google seeks to seal here easily
 13 meet the higher “compelling reasons” standard, the Court need only consider whether these materials
 14 meet the lower “good cause” standard.

15 **III. THE ABOVE IDENTIFIED MATERIALS SHOULD ALL BE SEALED**

16 Courts have repeatedly found it appropriate to seal documents that contain “business
 17 information that might harm a litigant’s competitive standing.” *Nixon v. Warner Commc’ns, Inc.*, 435
 18 U.S. 589, 589-99 (1978). Good cause to seal is shown when a party seeks to seal materials that
 19 “contain[] confidential information about the operation of [the party’s] products and that public
 20 disclosure could harm [the party] by disclosing confidential technical information.” *Digital Reg of*
 21 *Texas, LLC v. Adobe Sys., Inc.*, 2014 WL 6986068, at *1 (N.D. Cal. Dec. 10, 2014). Materials that
 22 could harm a litigant’s competitive standing may be sealed even under the “compelling reasons”
 23 standard. *See e.g. Icon-IP Pty Ltd. v. Specialized Bicycle Components, Inc.*, 2015 WL 984121, at *2
 24 (N.D. Cal. Mar. 4, 2015) (information “is appropriately sealable under the ‘compelling reasons’
 25 standard where that information could be used to the company’s competitive disadvantage”) (citation
 26 omitted). Courts in this district have also determined that motions to seal may be granted as to
 27 potential trade secrets. *See, e.g. United Tactical Sys., LLC v. Real Action Paintball, Inc.*, 2015 WL
 28

1 295584, at *3 (N.D. Cal. Jan. 21, 2015) (rejecting argument against sealing “that [the party] ha[s] not
2 shown that the substance of the information . . . amounts to a trade secret”).

3 Here the Joint Case Management Statement comprises confidential and proprietary
4 information regarding highly sensitive features of Google’s internal systems and operations that
5 Google does not share publicly. Specifically, this information provides details related to cookies,
6 internal identifiers, and various data logs maintained by Google, as well as Google’s internal
7 communications and practices with regard to Incognito, X-Client-Data Header, and their proprietary
8 functions. Such information reveals Google’s internal strategies, system designs, and business
9 practices for operating and maintaining many of its important services while complying with its legal
10 and privacy obligations.

11 Public disclosure of the above-listed information would harm Google’s competitive standing it
12 has earned through years of innovation and careful deliberation, by revealing sensitive aspects of
13 Google’s proprietary systems, strategies, and designs to Google’s competitors. That alone is a proper
14 basis to seal such information. *See, e.g., Free Range Content, Inc. v. Google Inc.*, No. 14-cv-02329-
15 BLF, Dkt. No. 192, at 3-9 (N.D. Cal. May 3, 2017) (granting Google’s motion to seal certain sensitive
16 business information related to Google’s processes and policies to ensure the integrity and security of
17 a different advertising system); *Huawei Techs., Co. v. Samsung Elecs. Co.*, No. 3:16-cv-02787-WHO,
18 Dkt. No. 446, at 19 (N.D. Cal. Jan. 30, 2019) (sealing confidential sales data because “disclosure
19 would harm their competitive standing by giving competitors insight they do not have”); *Trotsky v.*
20 *Travelers Indem. Co.*, 2013 WL 12116153, at *8 (W.D. Wash. May 8, 2013) (granting motion to seal
21 as to “internal research results that disclose statistical coding that is not publically available”).

22 Moreover, if publicly disclosed, malicious actors may use such information to seek to
23 compromise Google’s internal data logs, identifier systems, and practices. Google would be placed at
24 an increased risk of cyber security threats. *See, e.g., In re Google Inc. Gmail Litig.*, 2013 WL
25 5366963, at *3 (N.D. Cal. Sept. 25, 2013) (sealing “material concern[ing] how users’ interactions with
26 the Gmail system affects how messages are transmitted” because if made public, it “could lead to a
27 breach in the security of the Gmail system”). The security threat is an additional reason for this Court
28 to seal the identified information.

1 The information Google seeks to redact, including cookies, internal identifiers, and various
 2 data logs maintained by Google, as well as Google's internal communications and practices with
 3 regard to Incognito, X-Client-Data Header, and their proprietary functions, is the minimal amount of
 4 information needed to protect its internal systems and operations from being exposed to not only its
 5 competitors but also to nefarious actors who may improperly seek access to and disrupt these systems
 6 and operations. The "good cause" rather than the "compelling reasons" standard should apply but
 7 under either standard, Google's sealing request is warranted.

8 **IV. CONCLUSION**

9 For the foregoing reasons, the Court should seal the identified portions of the Joint Case
 10 Management Statement.

11 DATED: July 21, 2021

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